

§ 1464.8

7 CFR Ch. XIV (1–1–04 Edition)

disposed of the tobacco as producer tobacco, shall be jointly and severally liable with the producer for returning any loan proceeds previously paid in the name of, or for the account of, the producer. Further, the disposition of any tobacco as producer tobacco where the producer is not then or thereafter considered to have been an eligible producer with respect to such tobacco may be the subject of penalties on the grounds of false identification, excess marketings, or otherwise as provided in part 723 of this title. These remedies are in addition to any others as may apply.

[51 FR 32426, Sept. 12, 1986, as amended at 53 FR 43675, Oct. 28, 1988; 56 FR 21259, May 8, 1991; 57 FR 43583, Sept. 21, 1992; 60 FR 21037, May 1, 1995; 67 FR 484, Jan. 4, 2002; 68 FR 65386, Nov. 20, 2003]

§ 1464.8 Eligible tobacco.

Eligible tobacco for the purpose of pledging such tobacco as collateral for a price support loan is any tobacco of a kind for which price support is available, as provided in §1464.2, that is in sound and merchantable condition, is not nested as defined in 7 CFR part 29, and:

(a) Is not a kind of tobacco for which marketing quotas are not in effect for the marketing year because marketing quotas have been disapproved in a referendum of producers;

(b) Is offered for marketing by the person who was the producer of the tobacco, or in the case of a deceased producer, by the duly authorized successor(s) in interest;

(c) Is offered for marketing in accordance with §1464.2(b);

(d) If marketing quotas are in effect for the kind of tobacco:

(1) The farm operator has filed a report of the acreage planted to tobacco on the farm in the applicable year in accordance with part 718 of this title.

(2) The tobacco was produced on a farm on which neither the reported nor determined acreage of the kind of tobacco exceeds any acreage allotment established for the farm in accordance with the applicable part 723 of this title for the kind of tobacco for the applicable year.

(3) Is identified when delivered to the association either directly or through

an auction warehouse with a single marketing card for each lot of tobacco.

(e) If marketing quotas are in effect for the kind of tobacco or if marketing quotas are not in effect but would have been in effect for the kind of tobacco had such marketing quotas not been terminated by the Secretary, the operator of the farm on which the tobacco was produced:

(1) Has certified that all tobacco delivered from such farm for price support will not have not been nested as defined in part 29 of this title.

(2) Has certified to the FSA county committee on a form approved by the Deputy Administrator that all pesticides (including plant regulators, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connection with the production of the tobacco have been approved by the Environmental Protection Agency for use on tobacco and any such pesticides that were used were applied in accordance with label directions.

(3) Has not refused to permit the sampling of such tobacco, either on the farm or where stored, for chemical analysis for the purpose of verifying the accuracy of any pesticide certification.

(f) With respect to burley and flue-cured tobacco only, is a quantity of tobacco which when added to the pounds of the respective kind of tobacco previously marketed from the farm during the marketing year does not exceed 103 percent of the effective farm marketing quota established for the respective kind of tobacco for that year.

(g) With respect to flue-cured tobacco only, is a quantity of tobacco which was delivered to the association through an auction warehouse and is a quantity which when added to the pounds of flue-cured tobacco previously marketed from the farm at that warehouse does not exceed the quantity of flue-cured tobacco designated by the farm operator for marketing at that warehouse.

(h) Any tobacco with respect to which the producer is not an eligible producer under the provisions of §1464.7 shall not be eligible for a price support loan and in any case in which the producer is deemed to have ceased to have

Commodity Credit Corporation, USDA

§ 1464.10

retained the status of an eligible producer due to an advance or other preauction arrangement, the producer's marketing card shall not be used to market such tobacco except to reflect a nonauction marketing to the person who paid an advance to the producer or took possession of the tobacco from the producer.

[51 FR 32426, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 57 FR 43584, Sept. 21, 1992; 61 FR 33304, June 27, 1996; 62 FR 3198, Jan. 22, 1997; 66 FR 53509, Oct. 23, 2001; 68 FR 65385, Nov. 20, 2003]

§ 1464.9 Refund of price support advance.

In any case in which a producer has received price support on a lot of tobacco such producer shall refund to CCC any price support advance received with respect to such lot of tobacco if it is determined, after notice and opportunity for an administrative hearing in accordance with part 780 of this title, that such producer:

(a) Received a price support advance on tobacco that was nested, as defined in part 29 of this title or otherwise not eligible for price support. The county committee, with concurrence of a State Committee Representative, may reduce the refund with respect to tobacco otherwise required in this part, in accordance with guidelines issued by the Deputy Administrator.

(b) Filed a false report with respect to the use of pesticides on tobacco produced on the farm from which such lot of tobacco was identified, at the time of marketing, as having been produced.

(c) Misrepresented any fact affecting a tobacco program determination, adopted any scheme or device which tends to defeat the purpose of the tobacco program, or made any fraudulent representation which tends to defeat the purpose of the tobacco program. The refund of CCC price support advance shall apply to all payments on all farms received by such producer.

[51 FR 32427, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 61 FR 33304, June 27, 1996]

§ 1464.10 No net cost tobacco fund or account.

(a) *Definitions.* As used in this part and in all instructions, forms, and doc-

uments in connection therewith, the following terms shall have the meanings herein assigned to them.

(1) *Account* means an account established within the CCC for an association, which account shall be known as the "No Net Cost Tobacco Account."

(2) *Area* when used in connection with an association, means the general geographical area in which farms of the producer-members of such association are located, as determined by the Secretary.

(3) *Association* means a producer-owned cooperative marketing association which has entered into a loan agreement with CCC to make price support available to producers of tobacco.

(4) *CCC* means the Commodity Credit Corporation.

(5) *Fund* means the capital account to be established within each association, which account shall be known as the "No Net Cost Tobacco Fund".

(6) *Net gains* means the amount by which total proceeds obtained from the sale by an association of a crop of quota tobacco pledged to CCC for a price support loan exceeds the principal amount of the price support loan made by CCC to the association on such crop, plus interest and charges.

(7) *Quota tobacco* means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.

(8) *To market* means to dispose of quota tobacco by voluntary or involuntary sale, barter, exchange, gift between living persons, or consigning the tobacco to an association for a price support advance.

(9) *Purchaser* means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, burley or flue-cured tobacco from the producer, or, with respect to the 1986 and subsequent crops of such tobacco, from an association.

(b) *Establishing a No Net Cost Tobacco Fund.* Except as provided in paragraph (c) of this section, each association shall establish and maintain a Fund in accordance with the requirements of section 106A of the Agricultural Act of 1949, as amended.